

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	4:06-cr-016-01 SEB-MGN
	)	
ADAM MILES,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the undersigned U.S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, U.S. District Court Judge, on March 8, 2010, designating a Magistrate Judge to conduct a hearing on the Petition for Warrant for Offender Under Supervision filed with the Court, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under 18 U.S.C. §§3401(I) and 3583(e). Proceedings were held on April 29, 2010, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. The defendant, Adam Miles, appeared in person with his appointed counsel, William E. Marsh, Indiana Federal Community Defender. The government appeared by Barry D. Glickman, Assistant United States Attorney. U.S. Parole and Probation appeared by Todd C. Schaefer, who participated in the proceedings. The defendant waived his right to a preliminary hearing and admitted he violated seven conditions of his supervised release, consequently, probable cause was found as to allegation numbers 1 through 7.

The following procedures occurred in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and 18 U.S.C. §3583:

1. On April 29, 2010, William E. Marsh, Indiana Federal Community Defender, was present and was appointed by the Court to represent Mr. Miles in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Miles and his counsel who informed the Court that they had read and understood the specifications of violation and waived further reading thereof.

3. Mr. Miles was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Miles was informed that he would have the right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Miles was afforded the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. Mr. Miles was informed that, if the preliminary hearing resulted in a finding of probable cause that Mr. Miles had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on March 8, 2010.

7. On April 29, 2010, the defendant waived his right to a preliminary hearing and admitted that he committed the violations contained in specification of violation numbers 1 through 7, as set forth in the Petition. The violation specified as numbers 1 through 7 set forth in the Petition for Warrant or Summons for an Offender Under Supervision, are described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
<b>1</b>	<b>“The defendant shall not commit another federal, state, or local crime.”</b>
<b>2</b>	<b>“The defendant shall not possess or consume alcoholic beverages while on supervised release.”</b>
<b>3</b>	<b>“The defendant shall refrain from any unlawful use of a controlled substance.”</b>
<b>4</b>	<b>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.”</b>
<b>5</b>	<b>“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.”</b>
<b>6</b>	<b>“The defendant shall not leave the judicial district without permission of the Court or probation officer.”</b>
<b>7</b>	<b>“The defendant shall answer truthfully all inquiries by the probation officer, and shall submit a truthful and complete written report within the first five days of each month.”</b>

8. The Court takes judicial notice of the Petition in this cause.

9. Based on the defendant’s admissions, the Court finds and concludes that the evidence in this case demonstrates the following:

- a. On July 21, 2006, Mr. Miles term of supervised release commenced.
- b. On February 20, 2010, Mr. Miles was arrested by the Indiana State Police for Operating a Vehicle While Intoxicated and Operating a Vehicle With a BAC of .15 or Higher. According to the police report, the offender was contacted during a vehicle stop at 4:40 a.m. The trooper detected a strong odor of alcohol, the offender displayed slurred speech, and his balance

was unsteady. Consequently, he failed the blood alcohol test at a result twice the legal limit. The defendant was subsequently convicted of the above conduct in Dearborn County Superior Court, cause no. 15D011002CM00058.

c. In January of 2010, Mr. Miles submitted two diluted urine samples to the United States Probation Office in Long Beach, California. On January 13, 2010, the defendant's employer informed U.S. Probation Officer Todd C. Schaefer that Mr. Miles tested positive for marijuana and benzodiazepine. Following the conversation with his employer, Officer Schaefer contacted the offender and confronted him about the positive drug test for his employer, and the diluted urine samples provided to the United States Probation Office in Long Beach, California. Mr. Miles admitted he smoked marijuana the day before he left for California and that he smokes marijuana whenever he is stressed. The defendant also admitted taking Diazepam without a valid prescription.

d. On January 11, 2010, Mr. Miles admitted to Officer Schaefer that he left the Southern District of Indiana without permission and that he was in Long Beach, California.

10. Based on the defendant's admission, The Court finds that there is probable cause for the allegations contained in specification numbers 1 through 7.

11. Based on the information available to the Court, the Court further finds the following:

- 1) Mr. Miles has a relevant criminal history category of II. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Miles constitutes a Grade B violation, pursuant to U.S.S.G. §7B1(a)(3).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Miles is 6-12 months.

4) After considering the factors enumerated in 18 U.S.C. §3553(a), the Court determines the appropriate disposition for Mr. Miles's violations of the conditions of supervised release is that his supervised release is **REVOKED** as follows:

(a) Defendant shall be committed to the Bureau of Prisons to serve a term of imprisonment of 1 year and 1 day with no term of supervised release to follow.

The Court, having heard the evidence at the preliminary hearing and the argument of counsel for both sides, **NOW FINDS** that the defendant violated the above-delineated condition of his supervised release. The defendant's supervised release is therefore **REVOKED** and Adam Miles's supervised release shall terminate as follows:

(1) He will be committed to the Bureau of Prisons to serve a term of imprisonment of 1 year and 1 day.

(2) At the conclusion of the 1 year and 1 day term of imprisonment, there will be no further term of supervision.

The Magistrate Judge recommends that the Bureau of Prisons send Mr. Miles to FCI Manchester.

**WHEREFORE**, the U.S. Magistrate Judge **RECOMMENDS** the Court adopt the above Report and Recommendation revoking Mr. Miles's supervised release.

**IT IS SO RECOMMENDED** this 7th day of May, 2010.



Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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